

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

**ANTHONY JEROME McCLURE,**

**Petitioner,**

**v.**

**Civil Action No. 2:08CV86  
Criminal Action No. 2:02CR27**

**UNITED STATES OF AMERICA,**

**Respondent.**

**ORDER**

It will be recalled that on July 2, 2009, Magistrate Judge John S. Kaull filed his Report and Recommendation, wherein the Petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On July 23, 2009, Petitioner filed his objections.

Upon examination of the report from the Magistrate Judge, it appears to the Court that Petitioner's motion, which was filed pursuant to 28 U.S.C. §2255, was properly considered by Magistrate Judge Kaull in his Report and Recommendation. Upon consideration of the Petitioner's objections, the Court finds that the Petitioner has not raised any issues that were not thoroughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. As found by Judge Kaull, Petitioner's motion is untimely and successive. Therefore, it is

**ORDERED** that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

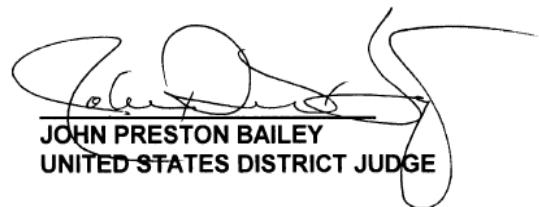
**ORDERED** that the Petitioner's §2255 Motion be, and the same hereby is, **DENIED**.

It is further

**ORDERED** that the above styled action be, and the same hereby is, **DISMISSED with prejudice** and **STRICKEN** from the docket of this Court. It is further

**ORDERED** that, pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. §2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy §2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong (citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

**ENTER:** March 15, 2010.



JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE